IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.2011 of 1990

Shri Dashahhumbad Digambar Jain
Panch Mahajan through Panch:

(1) Shri Vijaykumar Walchand Sha
age 50 years, Occ: Business,

(2) Shri Gulabchand Guatamchand Kothari,
age 70 years, Occ: Busienss

residents of 29, Shukrabar Peth,
Phaltan, Taluka Phaltan,
Dist. Satara. Petitioners

Vs.

Ali Mohamad Pathan,
age 66 yrs., Occ: Tailoring,
resident of 384, Raviwar Peth,
Phaltan, Taluka Phaltan,
Dist. Satara. Respondent

Mr.M.L.Patil for petitioners.
Mr.S.P.Thorat for respondent.

CORAM: B.H.MARLAPALLE, J.

June 8, 2007.

ORAL JUDGMENT:

1. Civil Suit Nos.369, 372 and 373 of 1980 were decreed by the learned Civil Judge, Junior Division at Phaltan by his judgment and order dated 31/7/1984 and three separate appeals came to be filed before the District Court i.e. Regular Civil Appeal Nos.231, 232 and 233 of 1984. The appeals were allowed and the suits for possession were dismissed.

The plaintiffs had, therefore, approached this Court in Writ Petition Nos.3817, 3818 and 3819 of 1988. All these petitions were allowed by a common judgment dated 20/12/1988 by this Court and the judgment and decree passed by the lower Appellate Court was set aside. The appeals came to be allowed by the learned Addl. District Judge at Satara vide his judgment and order dated 31/8/1989. Hence this petition under Article 227 of the Constitution.

2. At the first place the lower Appellate Court held that the appellants-defendants were justified in showing that they were unable to pay the rent for want of knowledge of the definite landowner of the suit property and, therefore, they could not be held to be the wilful defaulters. There were some disputes regarding the ownership of the property and it started on the demise of the original landlord Shri Hirachand Mulukchand Gujar. The landlord had died without executing a Will.

3. However, on the legal issue regarding the maintainability of the suits, the lower Appellate Court upheld the contentions of the defendants that the suits were not maintainable as the plaintiff

being a Public Trust, one of the co-trustees on the basis of the resolution passed unanimously could not file a suit and it was necessary that all the trustees were plaintiffs. It referred to the decision of the Division Bench of the Delhi High Court in the case of Duli Chand v. M/s. Mahabir Pershad Trilok Chand Charitable Trust **[AIR 1984 Delhi 145]**. The Delhi High Court, inter alia, held as under:

> (a) A suit by one of the co-trustees on the basis of the resolution passed unanimously by all other co-trustees authorising that trustee to file the suit would not be maintainable as the position of the trustees is exactly the same as of any other set of co-owners who must necessarily join together to file a suit. And
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> (b) It is possible for some of the trustees to authorise the others to file a suit but this could only be done by the execution of a power of attorney and it cannot be done by a resolution.

On the same point there is an earlier decision of the

Full Bench of the Gujarat High Court in the case of Atmaram Ranchhodbhai Vs. Gulamhusein Gulam Mohimyaddin & anr. **[AIR 1973 Gujarat 113]**. In para 11 the Full Bench observed as under:

> "We are, therefore, of the view that unless the instrument of trust otherwise provides, all co-trustees must join in filing a suit to recover possession of the property from the tenant after determination of the lease. No one single co-trustee, even he be a managing trustee unanimously chosen by the co-trustees, can maintain such a suit against the tenant without joining the other co-trustees. All co-trustees must be joined in the suit and if any one or more of them are unwilling to be joined in the suit as plaintiffs or for some reason or the other it is not possible to join them as plaintiffs, they must be impleaded as defendants so that all co-trustees are before the Court."

The decision of the Gujarat High Court has followed the decision of the Supreme Court in the case of Sheikh Abdul Kayum & ors. **[AIR 1963 SC 309]**. In

view of the well settled legal position, no fault could be found with the view taken by the lower Appellate Court on the maintainability of the suits and, therefore, no interference is called for in the said decision in this petition.

4. Hence the petition is dismissed. Rule discharged. No costs.

(B.H.MARL